Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of	)	
	)	
Telecommunications Relay Services	)	
And Speech-to-Speech Services for	)	CC Docket No. 98-67
Individuals with Hearing and Speech	)	
Disabilities	)	
	)	

PETITION FOR RECONSIDERATION

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SUMMARY

In this Petition for Reconsideration, Communication Services for the Deaf, Inc. (CSD) requests the Consumer and Governmental Affairs Bureau (CGB) of the Federal Communication Commission (FCC) to apply the NECA-established VRS rate of $14.023 as the VRS rate beginning July 1, 2003, and urges the Commission to complete its December 2001 proceeding to determine a fair and reasonable VRS cost recovery mechanism on an ongoing basis. In determining a final VRS compensation methodology, the Commission needs to consider a number of factors, including the labor intensive nature of VRS, the need for a low occupancy rate for VRS, the need for ongoing research and development on VRS technologies, and the considerable risks associated with the provision of VRS at the present time. CSD submits that CGB's recent Order of June 30, 2003 does not properly take into consideration these and other characteristics that are unique to VRS.

CSD also maintains that CGB's assumptions about the differences between VRS and VRI and the bureau's hypotheses for the spiraling nature of the VRS rates over the past two years are erroneous. Considerable differences between VRS and VRI exist, including requirements pertaining to functional equivalency, personnel, technology, and outreach. Moreover, no common carriers lawfully provided VRS service at rates set in 2000 and 2001 and even those few minutes that were provided at the $9.614 rate in 2002 were provided for a service that is very different than the on-demand service currently provided by CSD.

Application of the NECA rate is necessary for the FCC to fulfill its mandate to ensure the provision of functionally equivalent relay services under Section 225 of the

Communication Act. VRS has become the sole means of telephone communication for many individuals, especially deaf senior citizens and children whose primary language is American Sign Language and others who are unable to type efficiently enough to converse via traditional telecommunications relay services. CSD fears that unless the compensation rate and methodology set by the Commission is one that allows for a fair and reasonable return on a provider's actual expenses – as had been the Commission's goal in its December 2001 proceeding on VRS compensation – most providers will no longer be able to afford to offer VRS. Such an outcome would not only violate the functionally equivalent mandate of Title IV of the Americans with Disabilities Act, but would limit choice of VRS providers by consumers and run counter to efforts by the Commission to encourage telecommunications competition.

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Petition for Reconsideration

I. Introduction

Pursuant to Section 1.106 of the Commission's rules,[1] Communication Services for the Deaf, Inc. (CSD), by its attorneys, hereby petitions for reconsideration of the Order issued by the Consumer and Governmental Affairs Bureau (CGB) on June 30, 2003 modifying the video relay service (VRS) compensation rate on an interim basis.[2] CGB's Order reduces the cost recovery rate from the $14.023 per minute rate proposed by the National Exchange Carriers Association (NECA), to an interim per minute VRS rate of $7.75. The Order encourages providers to contact CGB for the purposes of discussing cost adjustments made to individual submissions for cost recovery[3] and notes that this interim VRS rate may be modified pending additional analysis of data submitted by VRS providers.[4]

The June 30th Order is not the first released from the Commission on VRS reimbursement. In a Memorandum Opinion and Order (MO&O) released on December 21, 2001, the Commission directed NECA to "ensure that providers are able to recover

[1] 47 C.F.R. §1.106.
[2] *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Dkt 98-67, DA 03-2111 (June 30, 2003)("Order").
[3] *Id.* at ¶33 n. 91.
[4] *Id.* at ¶1.

their fair costs related to providing VRS."[5] In that Order, the FCC adopted NECA's recommendations to separately capture VRS costs and minutes and to separately set a reimbursement rate for VRS. The 2001 Order, however, stopped short of adopting NECA's recommendations to permanently adopt the same compensation methodology for VRS as had been used for traditional TRS. The FCC explained that although it was directing NECA to use this same methodology on an interim basis, it was "not convinced that this methodology will provide adequate incentives to carriers to provide video relay services."[6] The Commission accompanied its MO&O with a Further Notice of Proposed Rulemaking that requested input into establishing an appropriate and permanent methodology for setting VRS compensation.[7] Because this 2001 proceeding was never completed, the FCC's directive to use the traditional TRS methodology remains in force.

CSD maintains that the best interests of consumers will not be served by the compensation rate set by CGB's recent June 30th Order. Specifically, the new interim rate will not enable VRS providers to offer video relay services that are functionally equivalent to conventional voice telephone services. In its December 2001 Order, the Commission listed several assumptions made by the fund administrator with regard to the provision of VRS. One of these assumptions was that "up-front technology costs to providers to establish VRS could be substantial, and ongoing labor expenses will be significant due to the difference in labor rates between traditional CAs and qualified VRS interpreters."[8] CSD maintains that the interim rate for VRS now set by CGB does not

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[5] *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Dkt No 98-67, FCC 01-371 (December 21, 2001) (December 2001 MO&O) at ¶34.
[6] *Id.* at ¶23.
[7] *Id.* at ¶36.
[8] *Id.* at ¶19, n.37.

take into consideration these and other high costs of providing VRS. Moreover, because the interim rate does not provide sufficient flexibility to research and invest in new VRS technologies, it effectively violates Section 225 of the Communication Act by "discourage[ing] or impair[ing] the development of improved technology."[9] CSD further maintains that comparisons between VRS and video remote interpreting (VRI) – which are listed as one of the bases for the interim rate in the June 30th Order – are inaccurate, and that assumptions about the spiraling rate for VRS are erroneous and fail to take into account the nature of current video relay services. Accordingly, CSD petitions for application of the NECA-established VRS rate as of July 1, 2003, and urges the Commission to complete its December 2001 proceeding to determine an appropriate permanent VRS cost recovery methodology.

CSD wishes to add that it is deemed by the FCC to be a vendor, not a common carrier, for the purposes of providing VRS. As a consumer-based leader of relay and other services of, by, and for the deaf community, however, CSD believes that is it important to seek reconsideration of the FCC's recent ruling because of its potential impact on this community. CSD fears that unless the compensation rate and methodology is one that allows for a fair and reasonable return on a provider's actual expenses – as had been the Commission's own goal in releasing the December 2001 FNPRM – most providers will no longer be able to afford to offer VRS. This result would not only be contrary to the objectives of Title IV of the Americans with Disabilities Act (ADA), but would thwart the Commission's interest in furthering competition within the telecommunications industry and adversely limit provider choice among VRS consumers.

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[9] 47 U.S.C. §225(d)(2).

II. VRS Fulfills the ADA's Mandate for Functional Equivalency

The cornerstone of the ADA's mandate for relay services is to provide telephone communication services that are "functionally equivalent" to telephone services available to people who do not have hearing or speech disabilities.[10] The FCC has recognized this goal on repeated occasions, beginning with its very first Report and Order setting forth operational, technical, and functional minimum relay standards.[11] Throughout these minimum standards are reminders of the Commission's ongoing efforts to ensure that relay services approximate, as closely as possible, telephone services that are available to Americans who use conventional voice telephone services. Requirements for low blockage rates, prompt answering speeds, prohibitions against limitations on the number, length, or types of calls, and around the around-the-clock relay availability are all intended to ensure that the telephone services provided to relay users are not, in any way, inferior to services available to the mainstream population.

For American Sign Language (ASL) users, however, the efforts to make text-to-speech relay services functionally equivalent to voice telephone services had limited success. Many of these individuals – especially children and senior citizens – who had limited English and typing skills, were unable to communicate effectively using TTYs or other text devices. For these and other individuals, communicating in text through traditional TRS was either not an accessible option, or significantly more burdensome than communicating in their native language of ASL. In March of 2000, the FCC

[10] 47 U.S.C. §225(a)(3).
[11] *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Order and Request for Comments, CC Dkt. 90-571, FCC 91-213 (rel. July 26, 1991).

recognized this fact when, in its Improved TRS Order, it expanded the scope of relay services to include a new technology called video relay service.[12] In that Order, the Commission concluded that VRS "is *necessary* to provide many people with disabilities relay service that is functionally equivalent to voice communications."[13] The Commission acknowledged its own "statutory mandate" to encourage VRS, and took the unprecedented action of authorizing cost recovery for both intrastate and interstate VRS through the interstate relay fund to encourage the development of this service.[14] In addition, in order to promote the development of VRS, over the past few years, the Commission has temporarily waived certain minimum standards that otherwise apply to TRS.[15] To date, however, the Commission has not mandated the provision of VRS. This is chiefly due to its belief that this service is still in its early stages of development.

At the time of the FCC's March 2000 Improved Services Order, VRS was still very much in its trial stages – offered at only a limited number of VRS public stations located around the country. Since that time, the low cost of webcams and the increasing availability of high speed Internet service has substantially changed the nature of VRS. Once an enhanced service for a few, VRS has now become the primary means of communication for individuals who are unable to read or write in English, but are fluent in ASL. Now able to access VRS from their homes and businesses, these individuals have experienced a new sense of independence previously unavailable to them. CSD has

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[12] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Dkt. No. 98-67, FCC 00-56, 15 FCC Rcd 5140 (rel. March 6, 2000)
[13] *Id.* at ¶26 (emphasis added).
[14] *Id.* at ¶24.
[15] *See In the Matter of Telecommunications Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Dkt. 98-67, DA 01-3029 (rel. December 31, 2001); *In the Matter of Telecommunications Services and Speech-to-Speech Services for Individuals with Hearing and*

watched the benefits of VRS grow, and has strived to provide a quality of VRS service that can fully meet the needs of the community that Title IV of the ADA was intended to serve. To this end, over the past two years, CSD has moved from providing limited VRS services – available only at limited times with substantial waiting periods – to an on-demand service that – until the June 30th Order was released – provided service twenty four hours each day, seven days a week. CSD's average speeds of answer over the past year have also paralleled those of traditional TRS. In the interest of responding to consumer needs, CSD has provided this high quality service even though it is not required to do so by the FCC.

The sense of independence and autonomy upon which VRS users have come to rely is threatened by the new rate set by the Commission. CSD understands that the Commission had only a limited period – merely two months after NECA submitted its cost filings – to approve or disapprove NECA's proposed rates. However, CGB's action – nearly cutting in half the proposed rate on the eve of its effective date – had a severe and immediate impact on both the VRS industry and the consumers which this industry serves. As a consequence of the FCC's action, CSD was forced to immediately cut hours and lengthen waiting times for VRS callers. Centers were closed and services were substantially reduced, as CSD undertook a full assessment of the impact that the new rate would have on its operations. These consequences could have been avoided had the Commission utilized NECA's proposed rate as the interim rate, pending an in-depth investigation of the final VRS rate and completion of its rulemaking on the appropriate cost methodology for VRS compensation.

Speech Disabilities, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Dkt 98-67, CG Dkt. 03-123, FCC 03-112 (rel. June 17, 2003).

CSD remains concerned about the future of VRS. Unless VRS remains a financially viable service, CSD and other providers may have to drastically alter the service to which VRS customers are already becoming accustomed. Ex parte communications with CGB reveal that the Commission is willing to permit a return on VRS capital investment of 11.25%. However, VRS is not a capital intensive business. Rather VRS is a service whose costs are primarily associated with labor and network operations. Concerns have been raised that the failure to consider these costs in determining the return on investment may result in insufficient financial incentive for common carriers and their underlying vendors to provide VRS. Because VRS is not currently mandated by the FCC, lack of such incentive could mean an end to this vital service for consumers. As the fund administrator recognized in its submission to the Commission prior to the December 2001 compensation Order on VRS, VRS is unlike other common carrier services, and its cost methodology should consider its labor intensive nature.

III. <u>Functionally Equivalent VRS Was Never Provided at Early Rates Set by NECA</u>

The June 30th Order notes that "the compensation rate for VRS jumped from approximately $5 per-minute to over $17 per-minute in a two-year period."[16] The Order suggests that cost-saving measures implemented through VRS waivers granted in 2001 have not prevented "the VRS compensation rate from more than tripling in the span of two years."[17] It concludes that the difference in labor costs for VRS interpreters should not, alone, be enough to account for the difference in rates between traditional TRS and VRS.

[16] Interim Order at ¶29.
[17] *Id.* at ¶31.

What the Order fails to acknowledge is that the VRS model as it existed in the year 2000 was very different from VRS as it exists today. As noted above, in 2000, when the rates were first set, only a limited number of VRS stations for very limited hours were set up outside of homes and offices. A limited number of VRS interpreters were provided for a limited number of calls received by each of these stations. For example, if two VRS stations were open for only eight hours a day with two interpreters, those stations could receive only two calls at any one time. If the number of calls that came into those stations at any one time exceeded two, subsequent callers were turned away. When the stations closed down – often when the public offices that housed them closed down, at 5:00 pm or 6:00 pm – all calls to the stations were discontinued. It was only natural, with so many calls rejected, that the costs associated with VRS during this period of infancy were far lower than they are today. The higher costs of today's VRS stem in part from the fact that today's VRS is on its way to becoming an on-demand service, with aspirations of responding to consumer needs on an around-the-clock basis.

More importantly, the following NECA reimbursement history documents that there were *no* common carriers able to provide VRS as a viable service at those lower rates:

- In the year 2000, 256 conversation minutes were claimed at the $5.143 rate.
- In the year 2001, no minutes were submitted at the $5.539, 7.449, or $9.614 rates.
- In the year 2002, after the VRS waivers were in place and the rate was $9.614, a small number of minutes began to be submitted by Sprint/CSD. At this low rate, service remained limited in both hours and availability. It was only after the rates increased substantially that CSD found itself in a position to truly begin to step up VRS operations to quality levels. CSD found that when consumers began enjoying these high quality services, the number of VRS minutes began to climb dramatically.

IV. **VRS and VRI Are Not Essentially the Same**

In its June 30th Order, CGB draws an analogy between VRS and VRI as partial justification for lowering the VRS rate. Specifically, the Order states that "the two services are essentially the same," and that "because VRS uses essentially the same video equipment and resources as VRI, . . . it is instructive to compare the costs of providing the two services."[18] The Commission goes on to refer to evidence that VRI costs $1.75 to $3.00 per-minute, and notes that it has no information that would suggest why VRS should cost five times more than VRI.

CSD submits that a comparison between VRS and VRI for the purposes of setting a compensation rate is entirely inappropriate. Although the two services utilize interpreters from remote locations, in virtually every other regard they are completely different from one another.

A. Functionally Equivalent Requirements

Unlike VRI, VRS is a service that consumers expect to be available on demand, in the same way that voice telephone callers expect to be able to instantly pick up the phone and connect with other voice users.[19] In order to achieve functional equivalency to conventional telephone services, VRS providers must be prepared to simultaneously handle multiple VRS calls of varying lengths, without prior notice regarding the length of those calls.[20] By contrast, VRI providers have complete control over the volume of VRI calls that they accept. VRI interpreters are scheduled by appointment – sometimes up to

[18] *Id.* at ¶30.
[19] 47 C.F.R. §64.604(b)(4) requires adequate network facilities "so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network."
[20] 47 C.F.R. §64.604(a)(3) prohibits VRS providers from "refusing single or sequential calls or limiting the length of calls." In addition, pursuant to this section, VRS providers must "be capable of handling any type of call normally provided by common carriers."

two weeks in advance. VRI interpreters need only be available for a specific time and length of appointment, and because that time and length are known well in advance, VRI providers need not be prepared to respond, at a moment's notice, to instant requests for interpreter services. VRI may also operate from single workstations at a time with off-the-shelf software components.

B. Technology Requirements

VRS and VRI depend on technology requirements that are considerably different from one another. Specifically, CSD uses extensive networking configurations to ensure the accurate and prompt distribution of VRS calls to VRS agents located at call centers around the country. The technology used is designed to ensure the expeditious assignment of each call to the next available agent, at answer times that approach those required of TRS. Moreover, VRS is designed to provide compatibility with a variety of end user equipment and software applications, including ISDN, voice, T-1 and other broadband services. VRS must also be compatible with calls originating from multiple user interfaces, including various types of computers, set top conferencing devices and videophones. Under FCC rules, VRS providers must also be able to provide redundant service, in the event that their primary systems are adversely affected by emergencies or other disasters.[21] Similarly, VRS must guarantee the confidentiality of all calls through firewall protections and other measures.[22]

C. Personnel Requirements

Personnel needed to operate VRS differs significantly from VRI. First, high level engineering is needed for VRS to integrate the unique hardware platforms and software

[21] 47 C.F.R. §64.604(b)(4) requires VRS providers to "have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use."

technologies described above. Second, specialized VRS call center management and personnel are needed for ongoing scheduling, training on standardized relay procedures, performance monitoring, operations support, and security typically not required of VRI.[23] Third, under the FCC's rules, all VRS interpreters must be skilled enough to handle any type of VRS call, without prior notice of the need for specialized vocabulary on any given call. This means that VRS providers must have on hand qualified interpreters who have significant experience in all types of interpreting.[24] In contrast, because VRI allows for advance notification, customers may specify designated interpreters that are particularly skilled in the vocabulary needed for their appointments. Fourth, VRS requires significant customer support to respond to firewall issues and other issues that confront consumers. Finally, unlike VRI providers, VRS providers must incur costs associated with regulatory personnel in order to ensure compliance with FCC rules.

D. Other Differences

There are yet other differences between VRS and VRI. While VRS providers are required to conduct outreach on their services, no similar requirement exists for VRI.[25] In addition to educating consumers about the existence of VRS, in order for VRS to be effective, VRS providers must educate consumers on how to use their end user equipment

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[22] 47 C.F.R. §64.604(a)(2) imposes strict guidelines for relay confidentiality.

[23] FCC mandatory minimum standards contain numerous requirements for communication assistants (CAs) responsible for handling any type of TRS call. For example, CAs are not permitted to intentionally alter relayed conversations, they must stay with their calls for a minimum of ten minutes, and with limited exceptions, they are not permitted to keep records of any relayed conversations. *See* 47 C.F.R. §64.604(a)(2), (5). Training must be provided to ensure that interpreters abide by these and other TRS standards along with their general legal and ethical interpreter obligations when providing VRS.

[24] 47 C.F.R. §64.604(a)(1) requires that VRS communication assistants be able "to interpret effectively, accurately, and impartially, both receptively and expressively, *using any necessary specialized vocabulary*." (emphasis added).

[25] 47 C.F.R. §64.604(c)(3) requires carriers to "assure that callers in their service areas are aware of the availability and use of all forms of TRS." Moreover, efforts to educate consumers should be designed to reach "all segments of the public, including individuals who are hard of hearing, speech disabled, and senior citizens as well as members of the general population."

and software to gain access to VRS, work through firewall issues, and augment or modify network connections to support connectivity requirements through a variety of broadband modes (cable, DSL, T-1, etc). In the VRS environment, consumers need to determine what technology tools will enable them the greatest access. Because the level of their knowledge on these matters varies tremendously, VRS providers must be ready to provide varying levels of assistance to their customers. Conversely, VRI providers typically work directly with a corporate, business or government entity whose main focus is to establish a single point of access within that entity for users of VRI. The latter requires far less general consumer education and individual customer relations support than does VRS.

VRS providers must also conduct sophisticated industry tracking to comply with FCC reporting, billing and complaint log mandates.[26] VRI providers do not.

V. <u>The Assumption of Significant Risks Have Contributed to Higher VRS Costs</u>

In addition to the high personnel, technology, and other costs discussed above, CSD submits that the considerable risks associated with the provision of VRS have also contributed to its current costs. Although entering its third year for cost recovery purposes, VRS remains a relatively new service with call volumes that are still too low for any provider to fully take advantage of cost efficiencies. Moreover, continued uncertainty about VRS reimbursement rates and the effective dates for those rates leave providers unsure about the payments for services they provide. Because the FCC sets rates for VRS annually, VRS providers are unable to forecast long term revenue

[26] *See e.g.,* 47 C.F.R. §§64.604 (c)(1) (requiring the maintenance and summary of consumer complaint logs); 64.604(c)(2) (requiring the submission of a contact person or office to the FCC); 64.604(c)(5)((iii)(C) (requiring the submission of detailed cost data to the TRS fund administrator).

projections. As a consequence, VRS vendors must shorten their cost recovery period in order to ensure that their investments and operating expenses are recovered. The recent Interim Order is an excellent example of how this risk comes into play, and how such a dramatic reduction in compensation could prevent a vendor from recovering its costs.

Today's total industry call volumes for all VRS providers approach 225,000 minutes a month. A truly efficient service for one VRS provider would need to approach 500,000 minutes of service per month. In order to reach those levels, however, consumers must develop both familiarity and comfort with using VRS. A look back at the early experiences of traditional TRS providers during the late 1980s and early 1990s reveals that then, too, the growing pains of offering a new service resulted in unpredictable call volumes and start-up inefficiencies. During that period, as now, providers were experimenting with a variety of market approaches to achieve the greatest efficiencies. For example, one approach used tiered pricing that reduced per minute compensation as higher call volume thresholds were achieved, the latter reflecting more efficient service offerings. During that early period, as minutes of use increased, cost efficiencies caused the costs associated with TRS to go down. The same is expected to occur with VRS.

VRS providers also face uncertainty about future revenue sources. Specifically, it is not clear whether future VRS funding will come from federal or state sources, whether VRS will remain optional or become mandatory, and whether VRS rates in the future will depend on state-issued RFPs or NECA-based cost submissions. At present, the FCC funds all VRS services through the interstate TRS fund. If funding for VRS shifts to the states but VRS continues to not be mandated, some states may choose not to provide

VRS, which would substantially reduce revenues for VRS providers. The potential migration of funding to the states combined with the uncertainty of not knowing whether this service will remain optional creates significant risk for providers now willing to offer VRS.

A third factor adds risk to the provision of VRS. At present, various TRS minimum standards are waived with respect to VRS. The purpose of these waivers is to facilitate the provision of VRS during these early years of its operations. But uncertainty about the expiration dates for these waivers continues to have a dramatic impact on vendor costs for compliance. Elimination of these waivers – for example, those pertaining to around-the-clock service and average speed of answer – could, in fact, dramatically impact VRS costs.[27]

When VRS was in its trial stages, some states compensated providers on a per-position basis, eliminating risks associated with per minute compensation. The guarantee of per-position compensation no longer exists, and VRS providers are now faced with enormous risks as they undertake the provision of this service. Although the FCC's stated goal is to ensure the viability of the NECA fund, CSD fears that if VRS service quality is diminished as a result of this interim rate, consumers will be less likely to use VRS, and the number of VRS minutes could actually decline. In addition, individuals who try VRS for the first time will experience frustration when attempting to use the service, and may permanently be driven away from the service because of its new limitations. If these events occur, cost efficiencies will be kept down, and each provider's cost submissions and reimbursement rates might remain high. Should the Commission move forward with a change in cost recovery methodology for VRS, CSD urges that such change give adequate consideration to the risks associated with the provision of this service, to ensure a fair and reasonable return on the costs incurred.

VI. Occupancy Rates Must be Sufficient to Provide Functionally Equivalent VRS

CGB has raised concerns about the occupancy rates of VRS interpreters. As the FCC is aware, sign language interpreters are unable to continue interpreting for extended periods of time without causing bodily harm and injury. Accordingly, the percentage of time that VRS interpreters can work without rest is much lower than that of traditional TRS operators. CGB appears to recognize this fact, and has stated that "[t]he data provided to NECA by VRS providers demonstrate that VRS costs and payment requirements are materially different from those for traditional TRS."[28]

However, CSD remains concerned that CGB has not fully considered the low occupancy rates that result when efforts are made to provide VRS on a twenty-four hour, seven day a week basis, with answer times that approximate traditional TRS. VRS call volumes on a daily and weekly basis continue to vary significantly, and an elastic workforce is not as easily accomplished with smaller teams and scarce interpreter resources. The unique skills required in sign language interpreting, as well as the compensation standards commonly set by the interpreter industry, make it difficult to increase or decrease a VRS workforce with less than 24 hours notice even when changing traffic patterns may dictate a corresponding change in that workforce. For example, if an interpreter is "cancelled" at the last minute in the VRS environment to "right-size" the call center workforce, the salary of that interpreter continues to be an obligation of the VRS provider. It is critical to take these factors into consideration as the Commission

[27] A request to the FCC to extend the current waivers for VRS will be forthcoming.
[28] December 2001 Order at ¶22.

determines appropriate VRS occupancy and efficiency levels. Additionally the impact of floating interpreters on occupancy rates and the cost of making these interpreters available must be taken into consideration. VRS call centers must employ a workforce of back-up interpreters (floaters) who are not taking calls and are not logged into positions (25% or more of the total workforce). These floating interpreters are available to support actively engaged video relay service interpreters logged into positions who are:

1. having difficulty in reading an end users' signing presentation;
2. participating in training updates which take them off-line;
3. ready to receive a personal break; and,
4. encountering rapid pace situations such as conference calls.

CSD maintains that consumers have a need and a right to VRS that is functionally equivalent to voice telephone services. But functional equivalency cannot be achieved if the occupancy rate is set too high. CSD will be submitting additional information to the FCC on what it believes to be appropriate occupancy rates, in the hope that a mutually agreeable rate can be established with the Commission.

VII. Conclusion

CSD urges CGB to apply the NECA rate of $14.023 for VRS, effective as of July 1, 2003. In addition, CSD urges the Commission to complete the rulemaking that it initiated in December 2001 to establish a permanent cost recovery methodology that can ensure the provision of functionally equivalent VRS and provide fair and reasonable compensation for VRS providers.

Respectfully submitted,

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